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IN THE

Supreme Court of the United States

October Term, 1973.

No. 73-5370.

MARTIN J. FITZPATRICK,
Petitioner,

vs.

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

BRIEF FOR THE RESPONDENT, THE PEOPLE OF THE STATE OF NEW YORK.

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Reasons for Denying the Writ.

I.

The murder weapon seized at 1040 Midland Avenue, Syracuse, New York, does not constitute a "fruit of the poisonous tree" under *Wong Sun v. United States*, 371 U. S. 471, 83 S. Ct. 407 (1963).

Admissions obtained without the technical showing of the prerequisite warnings of *Miranda v. Arizona*, 384 U. S. 436, 86 S. Ct. 1602 (1966), do not invalidate a seizure conducted as a result of such admissions within the factual pattern at bar, when sound police procedures would have inevitably discovered the weapon.

The Court of Appeals correctly followed the reasoning of *Wong Sun v. United States,* 371 U. S. 471, 83 S. Ct. 407 (1963), below in adopting an "inevitable discovery" rule, as did the Supreme Court of California in a case in which this court denied certiorari, *Lockridge v. Superior Court of Los Angeles County,* 3 Cal. 3d 166, 474 P. 2d 683, cert. den. 402 U. S. 910, 91 S. Ct. 1387 (1971).

As the California Supreme Court observed in *Lockridge,* the exclusionary rule of *Weeks v. United States,* 232 U. S. 383, 34 S. Ct. 341 (1914), and *Mapp v. Ohio,* 367 U. S. 643, 81 S. Ct. 1684 (1961), was satisfied in that case by the suppression of the illegally seized weapon, and therefore that the allegedly "poisoned" testimony of witnesses thereby obtained need not be suppressed. Moreover, in *Lockridge* the court observed that there was no evidence that, without the lead supplied by the gun, the police would have been led to the robbery report by the victims. In the case at bar, the record indicates that, after the seizure of the weapon, a valid search warrant for 1040 Midland Avenue was obtained in accordance with sound police procedures.

"Inevitable discovery" under the fact pattern at bar falls within the same policy considerations of the "independent source" rule as to the dissipation of the taint on the "poisonous fruit." *Silverthorne Lumber Co. v. United States,* 251 U. S. 385, 40 S. Ct. 182 (1920); *Nardone v. United States,* 308 U. S. 338, 60 S. Ct. 266 (1939).

II.

Chimel v. California, 395 U. S. 752, 89 S. Ct. 2034 (1969), does not require a showing of the defendant's continuing capacity to grab for a valid search made incidental to a lawful arrest.

There is ample justification for a search of the arrestee's person and the area "within his immediate control," construing that phrase to mean the area from which he "might obtain weapons or evidentiary items." *Chimel v. California,* 395 U. S. 752, 89 S. Ct. 2034 (1969).

The defendant argues, that since he was removed from the closet to the adjacent hallway, that such action proscribes the police from reaching back into the closet to seize the murder weapon.

"The ultimate standard set forth in the fourth amendment is reasonableness." *Cady v. Dombrowski,* 93 S. Ct. 2523, 2527 (1973). Nothing in *Chimel* requires a showing by the People of a continuing capacity to grab by the defendant. Moreover, the immediate search of the very closet where the defendant was arrested is far different from the proscribed search of "closed or concealed areas." *Chimel v. California,* 395 U. S. 752, 763, 89 S. Ct. 2034, 2040 (1969).

The Court of Appeals applied the *Chimel* rule of reason wisely in this case, and no question of law exists which merits the attention of this court.

III.

Sufficient probable cause existed to enter 1040 Midland Avenue and to arrest the defendant.

Probable cause to arrest is a mixed question of fact and law and both the Oneida County Court and the Court of Appeals found ample probable cause for the arrest of the defendant at 1040 Midland Avenue.

As the Court of Appeals correctly observed on this point:

> Nor was there need in this case for a search or arrest warrant. The shootings by a man named Fitzpatrick, whose car had been identified as belonging to a friend of "Martin Fitzpatrick" and whose trail led close to a house owned by a man of that same name, as well as the defendant's incriminating words of surrender just before the officers found him in the closet—all these gave the police more than sufficient "probable cause" to arrest him. Moreover, the "permissible scope of search" must be at least "as broad as may reasonably be necessary to prevent the dangers that the suspect at large in the house may resist or escape." (*Warden v. Hayden,* 387 U. S. 294, 299.) "The Fourth Amendment does not require police officers to delay in the course of an investigation", the court declared in the *Hayden* case, "if to do so would gravely endanger their lives or the lives of others. Speed here was essential" (387 U. S., at pp. 298-299). It was just as essential in the present case, despite the passage of some hours since the shootings had occurred. Those hours were undoubtedly spent in interviewing DiGeorge and Mrs. DiLapi, in checking on the car, learning the defendant's identity, ascertaining the location of the house he owned and where he was likely to go. It was certainly not unreasonable for the police to

believe that he would conceal himself, as he actually did, in the house which he owned and in whose vicinity he had last been seen. The circumstances demanded that they act quickly. He had fatally wounded two persons, had threatened the life of a third and was known to be armed. Proper police procedures, as well as elementary considerations of prudence, required the officers to enter and search the house for him in order to prevent his escaping and endangering the lives of others. Accordingly, no constitutional rights of the defendant were violated by the warrantless entry, search and arrest.

People v. Fitzpatrick, 32 N. Y. 2d 499, 509, 346 N. Y. S. 2d 793, 799 (1973).

CONCLUSION.

Petitioner's writ of certiorari should be denied.

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